

Address to the citizens of  
Edinburgh re - the  
management of Heriot's Hospital

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A D D R E S S

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E D I N B U R G H,

Relative to the Management of GEORGE  
HERIOT'S Hospital.

By a FREE BURGESS of EDINBURGH.



Ye shall not afflict any WIDOW, or FATHERLESS CHILD;  
if thou afflict them, in any wise, and they call at all unto me, surely  
I will hear their Cry, and my Wrath shall be hot, and I will kill you  
with the Sword; and your Wives shall be Widows, and your  
CHILDREN FATHERLESS.

Exod. Ch. XXII. v. 23. Seq.

PRINTED in the Year M, DCC, LXXIII.



[By Gilbert Stuart]

See Book Collector, 1988, 37, 522-546.

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T O T H E  
C I T I Z E N S  
O F  
E D I N B U R G H.

**I**T is a general, and too well grounded complaint, that the estates belonging to charitable foundations are worse managed than any other \*. The poor are too liable to suffer from the indolence, the avarice, the partiality, and private views of trustees, who, having no particular interest in the welfare of the charity, are too apt to let their duty to God and man give place to their present passions. This is no where more manifest than in the scandalous mismanagement of the estate belonging to GEORGE HERIOT'S hospital, from the death of that good man to the present time. This noble charity is of such

\* It is with particular satisfaction that we except the governors of *Watson's* and the *Orphan hospitals* from this general charge. These gentlemen execute their trust in such a manner as confers the highest honour on themselves, and is of the utmost benefit to those useful charities.



such extensive use, and might, if properly administered, have been such a blessing to the good town, that it highly concerns every citizen to inquire into the causes of its present low circumstances, and why, in an age when the value of land is so much increased every where else, it has been the fate of this poor hospital alone to find its funds regularly diminish, so that at present it can only receive one hundred boys ; whereas it educated one hundred and thirty in the year 1740 \*. I think that this misfortune has been solely owing to the *improper choice of trustees* : George Heriot naturally thought, that a charity, designed for the sole benefit of the children of bargeffes, could not be deposited in better hands than the *magistrates, ministers, and town-council of Edinburgh* ; but the event has sadly proved how much he was mistaken. The ministers of Edinburgh were only eight in number in his time, and are now no more than sixteen ; whereas the magistrates and town-council are no less than twenty-five in number, by which means they are sure of out-voting the reverend ministers in all questions ; and, as the utmost ambition of a rich citizen is either to get into, or to preserve himself in, the government of the town, it is much to be feared, that, upon many occasions, all obligation of oaths, and duty to God and the poor, have given way to their little *temporary politics* : And, as the magistrates and town-council have the presentation of the ministers, perhaps, now and then, a *Judas* † may creep even into that venerable body, who, to serve a relation or friend, may, upon some occasions, lull his conscience to rest, and give his voice, rather as he wishes, than as his duty ought to direct : Certain it is, that, from  
the

\* See Maitland's history of Edinburgh, p. 440,

† If any reader chuses, he may substitute the word *Haman* in this place.

the above mentioned, or some other cause, the funds of this charity have been always misapplied, from its first erection to the present time; and, if we do not rouse ourselves, and act with vigour to preserve the poor remains of its effects, our children will in all likelihood see it bankrupt. To prove this, it will be necessary to deduce a short history of the hospital, from its foundation to the present time.

Mr George Heriot made his last will and testament on the tenth day of December, in the year of our Lord 1623, wherein he left the residue of his fortune (after payment of fundry legacies) ‘ To the provost, bailliffs, ministers, and town-council of Edinburgh, for and towards the founding and erecting an hospital within the said town of Edinburgh in perpetuity; and for and towards purchasing of certain lands, in *perpetuity*, to belong unto the said hospital, to be employed for the maintenance, relief, bringing up, and education of so many poor fatherless boys of the town of Edinburgh, as what he the testator gives, and the yearly value of the lands to be purchased shall amount or come unto.’ He then appoints his hospital to be governed by such rules and statutes, as either shall be made and signed by himself, in his lifetime, or by Dr Balcanqual, dean of Rochester, after his death; and appoints the provost, bailliffs, ministers, and town-council, and their successors, to be governors of the lands, possessions, revenues, and goods of the said hospital. He then appoints visitors of the said hospital in these words: ‘ And my will and earnest desire is, that the Lord Chancellor of Scotland, the two Lords Archbishops, the *Lord President* of the college of justice, and the *Lord Advocate* there, for the time being, or any three of them, upon  
‘ any



‘ any complaint made unto them, or any of them, upon  
 ‘ probable report of corruption in the provost, bailliffs,  
 ‘ ministers, and council aforesaid, or any of them, touch-  
 ‘ ing or concerning the premisses, shall carefully and punc-  
 ‘ tually examine the same, and thereupon redress and re-  
 ‘ form it, in such sort and manner, as to their wisdom  
 ‘ and discretion shall seem meet.’

By a codicil, annexed to his last will, he appoints the governors to keep and maintain ten burfars in the college of Edinburgh forever, allowing five pounds yearly to each of them. The election of the said burfars to be as shall be ordered by the statutes \*.

Mr Heriot died on the 12th day of February in the year of our Lord 1624, and the governors of the hospital entered into immediate possession, to the amount of L. 11303 : 13 : 4, and, on the 30th of November 1626, the executors of Mr Heriot’s will remitted to them the sum of L. 32093 : 15 : 9; and they sold several tenements belonging to him, for the sum of L. 211 : 2 : 2; so that they were possessed of a capital of L. 43608 : 11 : 3 Sterling †.

Dr Balcanqual delivered the statutes, for the government of the hospital, to them, on the 13th day of July 1627 ‡: Of which statutes we shall have occasion to speak more at large in the sequel; at present, we shall only observe, that, in the chapter entitled, *Of the Election of the Scholars*, it is expressly ordained, ‘ That, when they have learned to read and write Scots distinctly, and the rudiments of the Latin tongue, they shall be put out to the free grammar school of Edinburgh, there to be taught until such time as they are either fit for the college, or  
 to

\* See the will in Maitland, p. 431. seq.

† These facts are taken upon the authority of Maitland, ubi supra.



to be apprentices.' It is to be observed, that neither this statute nor the clauses in Heriot's codicil, appointing ten burfars to be maintained in the college, are observed at this day \* ! But to return to the history of the hospital. The governors having received the money from London, purchased, in the month of February 1628, a proper piece of ground, and began to build the present hospital, which was not finished until the year 1659 ; when it appeared, that the cost of the purchase and building amounted to the enormous sum of L. 27000 †. As this extravagance has been always alledged by succeeding governors as the principal cause of the low state of the hospital, it requires to be considered. Altho' they did not receive the money from London until November 1626, they were in possession of mortgages to the amount of upwards of *eleven thousand pounds* ; the interest of which, at 8 *per cent.* (the lowest then given) they had no pretence to meddle with ; and, from November 1626, they had interest for the whole at the same rate, or higher ; so that, in the year 1659, they were, or ought to have been possessed (reckoning simple interest only) of a capital of above L. 130,000 ; and, after deducting the cost of the building, there remained considerably above L. 100,000 ‡. And yet, (strange to tell !)

they

\* This deserves some explanation. It is true, that they send a few of the boys to the high school yearly ; but the statutes order all the boys to be educated there. The governors also, now and then, educate a promising lad in the college : I am told, that there are no less than three reverend and learned divines now alive, who were educated in Heriot's hospital ! But it is certain, that they have entirely laid aside the ten burfarships, which, by the founder's will, they were always to keep up.

† Maitland, p. 440.

‡ The reader will observe, that simple interest is only reckoned ; but by the statutes of the hospital, they ought to have realized all the surplus  
of

they opened their hospital, on the 11th day of April 1659, by the reception of *thirty boys*! and added, on the 8th day of August, ten more \*! Had these righteous governors made up their accounts in such a manner as to be able to maintain no more than forty boys? or did they intend to persuade their fellow-citizens, that the education of *charity-children* amounted to more than L. 200 *per annum* a piece, at a time when, it is well known, that sum would go farther than L. 1000 at this day? It is, however, more than probable, that their funds were really dissipated, as it does not appear that their purchases ever amounted to L. 32,000. It is to be remarked, that, before the year 1650, they had purchased lands to the value of near L. 22,000, when the interest of money was 8 *per cent.* or above; and, from the beginning of this century to the year 1717, they made purchases to the amount of near L. 10,000 more †. And, considering the immense rise of the value of lands all over the lowlands of Scotland, and the peculiar happiness of the situation of their estates, in the neighbourhood of the capital city, it would be no exaggeration to assert, that their grounds, taking one parcel with another, are now of five times the value they were of at the time of the hospital's acquiring the property of them; or, in other words, are worth above L. 150,000, to be

of the interest yearly, which would have made an amazing addition. The words of the statute are: 'All the monies which by debts, rents, or any other way, shall belong to the hospital, besides that which shall come in to the stock of the treasure-house, shall be disposed upon land, and no otherwise, for all time to come whatsoever.'

\* See Maitland, *ubi supra*.

† See the memorials for the merchants and trades, July 30. 1765. page 10.



be sold at this day; and yet it appears, by an original rental which I have now before me, that the full amount of the rent, for the year 1761, was no more than L. 1614 : 19 : 10  $\frac{11}{12}$ , and it is not supposed to have advanced L. 200 *per annum* at this time. This astonishing failure of the value of lands adjacent to the city of Edinburgh deserves the most serious consideration of every burghers. I have endeavoured to investigate the causes of it, which, I am sorry to say, appear to be the following.

1. Although Mr Heriot appointed the lands he directed to be purchased by his last will, to be held in perpetuity, and Dr Balcanqual has drawn up the governor's oath in the strongest words that could be devised\*, they have found out a method of eluding this, by the most scandalous equivocation that any set of men were ever guilty of. In short, they have made it a practice to feu out parcels of ground to their favourites, often at shameful under-rates, with a permission in the charter to the feuers, to purchase a part of their feu-duty, sometimes one third, sometimes one fourth, sometimes one fifth; instances of which the reader will see in the notes †. Is not this alie-

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nating

\* The oath is in these words : ‘ I A. B. do faithfully swear and promise before God, that, to the best of my knowledge and power, I shall carry and demean myself in all matters which concern the rents, the election of the officers or scholars, or any thing else belonging to George Heriot's hospital. And, if I know any going about at any time to defraud or defeat the end of the said pious founder, I shall reveal it to this assembly, or their successors. So help me God, and the contents of the Bible.’

† In the year 1750, Spankie and Jollie taylor, obtained a feu of 29 acres of the lands of Broughton, at the rate of 3 bolls of barley *per acre*, with liberty to purchase the third of the feu-duty at 25 years purchase. In

the

nating *for ever* a part of their estate, which they are prohibited from doing by the founder's will, the statutes, and their own oaths. Not that they are always so scrupulous; they, upon some occasions, have acted without even the mask of equivocation, and have made barefaced sales of the Charity's property; one of which shows such a *pious attention* to the duties of their trust, that it deserves particular notice. In the year 1750, the tenant of the Canonmills had fallen greatly in arrears; and the governors, that they might have no further trouble with these mills, agreed to alienate them altogether. As they had no particular end to serve at that time, they exposed them publicly to sale, and James M'Dowal, a very honest man, but of impaired faculties, was reported the highest offerer. Mr M'Dowal had been employed by one Scot to bid for him; but, having exceeded his commission, Scot refused to take the purchase, which was, most luckily for him, thrown upon M'Dowal's hands; for his man of business soon found out that there was a very considerable thirlage belonging to those mills, which those righteous guardians of the poor orphans knew nothing about, and actually sold the hospital's property, without making any inquiry into the extent or value of the subject †.

2. The shameful list of favourites to be found among the original feuers of the hospital estates, too well accounts for a loss of revenue; and to this may be added, the very low rates for which such feus have been granted.

the year 1755, Bailie Stewart obtained a feu of above 12 acres of lands at Broughton, at the rate of 4 bolls *per acre*, *with liberty to buy off one fourth of the feu-duty*. See the above mentioned memorial, p. 15. Many more instances might be given, if necessary.

† See the above cited memorial for the merchants and trades, p. 15,



ed. To begin with the Good Town: In the year 1737, the governors feued a piece of ground to the city called Heriot's crofts, although dean-of-guild Heriot offered them the fum of fifty pounds, and an annualrent of L. 3 : 4 : 1 $\frac{1}{2}$  more than the city gives; and, when they were called upon by the merchants and trades to account for fo glaring a partiality, declared, that, as the power of building upon the ground was limited, a liberation from that limitation would not fail of bringing in a great fum to the hospital, and they condescend on the clause of the charter granted to the town, which is in these words:

‘ Provided always, and it is hereby, and by the infestment  
 ‘ to follow hereupon, exprefsly provided and declared,  
 ‘ that it shall not be in the power of the said lord provost,  
 ‘ bailies, and town-council, or their successors in office, in  
 ‘ all time to come, to feu or dispose of the said piece of  
 ‘ ground, or any part thereof, to more than two persons  
 ‘ or communities, except what they shall retain to them-  
 ‘ selves for a road or public walk to Hope-park; and that  
 ‘ this limitation is perpetually to affect the said city's as-  
 ‘ signees to the premisses \*.’ And yet there is not a bur-  
 gess in Edinburgh who does not know that these crofts are  
 feued or disposed of to a number of proprietors, and that  
 George's-square is built upon a part of it, which, though  
 not finished, is worth several hundred pounds *per annum*  
 to the subfeuer Mr Brown, and that the hospital never  
 got sixpence for a licence to build upon it. The reader  
 will find some other instances of unjustifiable partiality in  
 the governors, in the notes † : I hasten to give an account  
 of

\* See the information for the governors of the hospital, dated Nov. 7.

p. 1764, p. 11.

† The feuers in Broughton do not pay above 50 shillings per acre; whereas the subfeuers pay no less than L. 16 per acre. In the year

of their latest and most remarkable grant of thirty-seven acres of land in Barefoot's-parks.

In December 1759, the town applied for a feu of the ground, for the purpose of building a new town upon it, and offered 3 bolls of barley *per* acre, during the continuance of the leases of the said ground, and 2 bolls of barley, additional feu-duty, upon the expiration of the said leases. According to the fate of all questions where the interest of the town and hospital interfered, a majority of the governors agreed to grant the feu, although seven ministers protested against it \*: In vain did these reverend gentlemen alledge the obligation of their oaths as governors, and their duty as Christians and men, to oppose the giving away so considerable an estate in perpetuity; in vain did they offer to agree to the extension of the royalty over these lands, and that the hospital should be bound to observe the settled plan in building, which was all the public service required; the profit of at least L: 2000 *per* acre, was too powerful an incitement: Avarice lulled all obligations of oaths and duty asleep; nay, so far were they infatuated by that detestable passion, that they had the amazing effrontery to advance, in a memorial printed and distributed by their order, the following strange position, viz. ' That a chief difficulty attending the extension of the royalty was, that the advantage of par-

1730, the magistrates of Edinburgh purchased of themselves and the ministers, as governors of the hospital, five acres of ground adjacent to the city, at no higher price than 20 years purchase of L. 10 : 18 : 5, the supposed annual value of these acres; and, a few days after, sold the same ground to the trustees for the improvement of fisheries and manufactures, at 25 years purchase ! The above cited memorial, p. 13.

\* viz. Messrs John Glen, Robert Wallace, George Kay, Robert Walker, Henry Lundy, John Erskine, and Robert Dick.





‘ whole plan, without putting the hospital to one farthing  
 ‘ of expence, upon their granting this feu \*.’ What expence did they free the hospital from? The expence of paving streets and laying in water could not be incurred but as the ground was feued out for building, the advantages of which would most amply have repaid the hospital. As to the expence of building the bridge, I am astonished that the magistrates would venture to alledge it in a paper put into the Lords boxes, as the court well knew, that the act of the 9th of George I. for continuing the duty upon ale &c. (which duty has been kept up to the present time, by various acts), this duty is expressly granted to the Town, to enable them to perform several public works and services; and, among others, *to enable them to narrow the North-loch into a canal of running water, and to make a communication-street to the fields or grounds belonging to the said city, on the north side thereof, and for purchasing such houses and grounds as shall be necessary for making such street or way, and for paying the debts of the town* †. It is remarkable, that the town has not performed one article of the public services required by the act, except building the bridge; and we have seen at whose expence that was done; and they have been so far from paying off their debts, that the encumbrances upon the Good Town’s estate have most enormously increased since that period, although, it is certain, that this duty brings in, at least, L. 6000 *communibus annis*. Weak and groundless, however, as their arguments were, they carried their point; and, to make the transaction entirely of a piece, they

\* See information for the governors of Herriot’s hospital, p, 13.

† See the act.



they paid a gentleman of the law the sum of L. 55 of the *hospital's money* for his agency in this affair \*.

Another cause of the failure of the estate of the hospital, is the frequent loss of the rents of their grounds, by the inattention or partiality of the governors: a most flagrant instance of which happened in the year 1691. Mr Fisher, the treasurer to the hospital, having arrested the Good Town's revenue for a large debt due to the charity, the governors, *brevi manu*, discharged the treasurer from insisting upon that arrestment. This is so glaring an instance of partiality, as no words can palliate, no language can excuse †. Indeed, the governors have all along shown such an inattention to the interest of the hospital, that, though it is well known that landlords have an hypothec upon the subject, so that, with common care, it is impossible they should not recover by-gone rents, in case the subject is not utterly destroyed; yet, it is certain, that, within the last forty years, they have lost above L. 2000 by the failure of tenants; several instances of which will appear in the notes ‡.

The reader has seen, that this charity has, in all cases, been made subservient to the purposes of the town, or to the private emolument of the favourites of the then magistrates. And the next instance I have to produce, is a most glaring proof of the indifference with which the governors sacrificed the estate of the charity to serve the  
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\* See abstract subjoined to the memorial by a considerable number of burghesses, &c. dated January 22. 1763, p. 4.

† See the same abstract, p. 2.

‡ L. 121 : 2 : 11, lost on William Smellie's feu at Dishenflat. L. 38, on David Wither Spoon's feu at Water of Leith. L. 44, on James Brownhill's feu at Abbey-hill. L. 68, on William White's tack at Ironside, &c. See the same abstract, p. 3.

dirty end of defeating an opposition at a new election of magistrates. In the year 1758, Mr Albert Monro, a gentleman of considerable landed property, was treasurer to the hospital, and, by his care, attention, and punctuality, gave universal satisfaction. Mr Rothead declared himself a candidate for the office of Lord Provost, in opposition to Mr Drummond; and, as there was a likelihood of his carrying his point, it was necessary to buy him off at all events. Nor could the then magistrates think of a better method of doing it, than by tempting him with the office of treasurer to the hospital, which they justly imagined, from the known circumstances of the man, was a bait he would snatch at: Accordingly, measures were taken to prevail upon Mr Monro to resign his office, which he did, and the governors elected Mr Rothead in his place, without demanding any security from him, although it was notoriously known, that his affairs were much embarrassed; and Mr GILBERT LAWRIE, then one of the governors of the hospital, had a mortgage upon his small, and only heritage, for L. 500 \*. The consequences were what might have been expected; of four years and upwards that he remained treasurer, during the last three years, his accounts were never called for; and, in fact, he kept no account at all for these years; so that, when he was, at last, turned out bankrupt and insolvent, he was found to be in arrear to the hospital † in the sum of L. 967 : 3 : 6<sup>7</sup>/<sub>11</sub>, which was totally lost, besides bringing the hospital into above L. 2000 debt to others; and, what is still more extraordinary, he was allowed L. 40 *per annum*, for his clerk's trouble, in  
keeping

\* See the governors oath, p. 9.

† See the minute, 6th January 1763.



keeping accounts, though he had no clerk, and kept no account at all \* !

The last instance I shall mention of the mismanagement of the governors is, the spending the hospital's money in frivolous and groundless law-suits ; and, of a great number of cases, I shall confine myself to the latest, I mean, the cause between the magistrates of Edinburgh (in the name of the hospital) and Mr Walter Ferguson, concerning his right of building upon his property, which is a feu from the hospital. This cause has been so much the discourse of all people in this town, and the citizens and inhabitants are so very unanimous in their sentiments of the merits of it, that it will be needless to enter into the history of it, further than to observe, that it is evidently the interest of the charity that Mr Ferguson should build ; that this appeared so clearly to the then governors, that they would not grant a charter to Mr Ferguson's author until *he had granted a bond obliging himself to build*, which had never before been asked of any of their feuers. The governors never before attempted to prohibit building on the feus belonging to the hospital. Moodie's feu, to the west of Mr Ferguson's, is covered with houses. The charter granted to Spankie and Jollie contains the same clause which is founded upon in this case † ; yet the governors

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were

\* See the summons of reduction, &c, the merchant company and trades, against the governors of the hospital.

† The clause is as follows : ‘ Provided also, that it shall not be lawful for any person to dig for stones, coals, sand, or any other thing within the said ground ; nor to use the same in any other way than by the ordinary labour of plough and spade, without the express consent of the governors.’

This

were so far from supposing that their vassals were thereby restrained from building, that Mr Butter (one of the governors who actually subscribed that charter) sub-feued a piece of ground from them for the purpose of building upon it; and Spankie and Jollie are now advertising ground to be sub-feued for that purpose: Yet the magistrates, from a supposition that their interest might possibly be affected, brought an action against Mr Ferguson, *at the expence of the charity*, which the Lords of Session lately decided unanimously in Mr Ferguson's favour. But the governors, resolving to stretch every point to serve the town, agreed, by a great majority, six days after the decision, to appeal to parliament, although the opinion of a Right Honourable lawyer (*one of the visitors of the hospital*) against that measure, was lying on the table before them. Against this measure, however, two reverend governors † entered their protests. By which prudent step, they not only preserved their characters from any imputation of breach of trust, but their *property from being affected* by the probable consequences of this shameful transaction.

I have now finished what I proposed, and shown, I hope to the satisfaction of every reader, that, ever since the foundation of the charity, the governors have made its funds subservient to the interest of the town, or themselves; by which means they have reduced its estate so much,

This clause, contrasted with the bond taken from Mr Ferguson's author, obliging him to build, shows clearly (to use the words of the learned judge before whom this cause was first brought), That it could only be meant as a stipulation, that the *vassal* should use his property *salva substantia*; and it is clear that it was so understood in the case of Spankie and Jollie's feu, although they had not given any bond to build.

† Dr M'Queen and Mr Lundie.



much, that an hospital, which, in case it had been tolerably managed, might have educated and maintained more than six hundred boys, can hardly provide for *one hundred*; and, if no steps are taken, will probably, in a short time, prove insufficient for *twenty*. It will be perhaps said, all this is very true; but what steps can be taken? If indeed it is impossible to remedy these disorders, what I have done is to no purpose; but, thank God! that is not the case. The founder appointed, by his will, five visitors to redress and reform any abuses or corruptions of the governors, viz. the Lord Chancellor, the Archbishops of St Andrew's and Glasgow, the Lord President, and the Lord Advocate, or any three of them. By the change of church-government, the two Archbishops no longer exist, but the other three do; for the Right Honourable the Lord High Chancellor of Great Britain is certainly, *quoad hoc*, the Chancellor of Scotland. Let us therefore apply to their Lordships; and I make no doubt but we may hope, from their justice and equity, to have the affairs of the hospital put into such a management as must effectually prevent all future dilapidations.

The first of these is the fact that the  
 system of taxation is not uniform  
 throughout the country. In some  
 districts the tax is very low, while  
 in others it is very high. This  
 is due to the fact that the  
 government has no power to  
 levy a uniform tax. It is  
 necessary for the government to  
 levy a tax which is high enough  
 to cover the cost of the  
 administration of the country.  
 This is the only way in which  
 the government can maintain  
 its power. The second of these  
 facts is the fact that the  
 system of taxation is not  
 based on the principle of  
 equality. The tax is not  
 levied on the basis of the  
 individual's income, but on  
 the basis of the individual's  
 property. This is a system  
 which is not based on the  
 principle of equality. The third  
 of these facts is the fact that  
 the system of taxation is not  
 based on the principle of  
 justice. The tax is not  
 levied on the basis of the  
 individual's ability to pay, but  
 on the basis of the individual's  
 property. This is a system  
 which is not based on the  
 principle of justice.





